

Exhibit 10

EXHIBIT 10

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
BIG LOTS, INC., et al, .
Debtors. . Case No. 24-11967 (JKS)
. 824 Market Street
. Wilmington, Delaware 19801
. Thursday, December 19, 2024

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 1:05 p.m.)

2 THE COURT: Good afternoon, everyone. Please be
3 seated.

4 This is Judge Stickles. We're on the record in Big
5 Lots, Case Number 24-11967.

6 Good afternoon.

7 MR. RESNICK: Good afternoon, Your Honor. For the
8 record, Brian Resnick of Davis Polk on behalf of the debtors.
9 And I'm joined today by several of my colleagues as well as
10 our co-counsel at Morris Nichols.

11 I'd like to thank Your Honor for scheduling time
12 for us today before the holidays, kind of a busy time.

13 Your Honor, we have, I think, two things that are
14 uncontested going forward on the agenda, but we also have an
15 important status update. I'm happy to take it in whatever
16 order Your Honor would like.

17 THE COURT: Whatever order you want to proceed in.

18 MR. RESNICK: All right. I'm going to start with
19 the status update --

20 THE COURT: Okay.

21 MR. RESNICK: -- because I think there's a lot
22 going on and we can cover the underbrush later in the
23 hearing.

24 So, Your Honor, I don't know if you saw the news,
25 but within the last two hours, we filed a press release that

1 announced that, unfortunately, the previously announced sale
2 to Nexus is not going to happen, unfortunately.

3 THE COURT: Okay. I had not seen that.

4 MR. RESNICK: Yeah, it just hit the wires and we
5 hadn't filed anything on the docket yet to that effect, so
6 I'm not surprised.

7 Your Honor, it's an unfortunate development.
8 Basically, just to rewind from when we were last here, we --
9 as Your Honor was aware, we were trying to close the sale
10 December 2nd or 3rd. And over that time period leading up to
11 that, Nexus informed us that they needed a little more time,
12 another week or so, a week or week and a half.

13 And in that intervening time, they informed us that
14 they're -- that a condition to closing would not be
15 satisfied, this being the minimum asset test. There was a --
16 there was a condition that the asset level be at a certain
17 level and that that wouldn't be satisfied. However, they did
18 inform us that they were hoping to still close the sale, they
19 just believed that additional liquidity was needed in the
20 business. And so the debtors and Nexus searched in earnest
21 for other parties to put in additional liquidity into the
22 Nexus deal, and we worked very hard to try to get that done.

23 And then, leading up to, I guess last weekend, when
24 we had a sale closing milestone of December 13th, which was
25 last, you know, Friday, and we were unable to get the sale,

1 you know, done -- closed by then, and so we were in default
2 as of the 14th.

3 At the same time, in discussions with Nexus, it
4 became clear, they basically informed us that they did not
5 really see a likely pathway to being able to close by the
6 December 31st outside date, though they were happy to
7 continue trying.

8 So we've been in round-the-clock discussions with
9 the various parties, with Nexus, with the lenders, with the
10 committee, in terms of the way forward. And what we've
11 determined we think is very important. Given the time of
12 year we're at here, we think it's crucial that we start
13 going-out-of-business sales at all the remaining stores --
14 this would be the 870 stores -- and we start them as soon as
15 tomorrow, to try to take advantage of the holiday shopping
16 season.

17 Importantly, that would not preclude a going
18 concern sale. And we are still in discussions with various
19 parties, including Nexus and including GBRP, who was our --
20 as you may recall, was the backup bidder at the auction and
21 is also the liquidator. But they have submitted a bid to us
22 that would be intended to be sort of jointly with other
23 potential operating parties and would involve several hundred
24 of the stores being, you know, continued to be run.

25 So we have a few irons in the fire. We're also in

1 discussions with various other parties. And the fact that
2 we're doing GOB sales would not preclude us from continuing
3 to do a going concern sale, if we're able to get one done
4 very quickly in the next couple of weeks.

5 THE COURT: Okay. Does anybody else want to be
6 heard?

7 (No verbal response)

8 THE COURT: I shouldn't cut you off. Is -- was
9 that --

10 MR. RESNICK: That, I think, covers the
11 introductory remarks and brings Your Honor up to speed as --

12 THE COURT: Okay.

13 MR. RESNICK: -- to where things stand.

14 THE COURT: All right. Thank you.

15 MR. ALBERTO: Good afternoon, Your Honor. Justin
16 Alberto of Cole Schotz on behalf of the Official Committee of
17 Unsecured Creditors.

18 As a threshold matter, Your Honor, thank you for
19 entering the order shortening notice on our motion to compel
20 compliance with the final DIP order.

21 Mr. Resnick is correct, the parties have remained
22 in constant contact, and we thank the -- Davis Polk and
23 debtors' professionals for that throughout this process.

24 We thought the best path forward today was to hold
25 our matter in abeyance and, instead use this time as a status

1 conference.

2 It's tough news to hear, obviously not a great time
3 of year -- not that there's any good time -- to announce what
4 you just heard.

5 But I want to -- first, I want to go back a little
6 in time and talk about what necessitated the motion. I'm not
7 going to argue it; and, if I do, I'll certainly stop because
8 it's not my intent. But also I want to focus on where do we
9 go from here because, if it's not self-evident, there could
10 be a big problem here, no pun intended.

11 Your Honor, when the committee was formed, it
12 raised a number of objections informally on the final DIP,
13 including standard objections you see from committees:
14 Waiver of the estate's surcharge right, roll-up, a shortened
15 challenge period. All of these objections were focused on
16 and designed to protect against the situation where the case
17 are -- or the cases are left administratively insolvent.

18 As you probably recall, several of the landlords,
19 some of whom are here today, also, filed their own
20 objections.

21 The parties worked collaboratively and settled all
22 of these issues. And most notably, in exchange for the
23 committee's consent to the 506(c) waiver and roll-up, the
24 debtors and lenders delivered a revised budget that
25 contemplated payment of approximately \$20 million of stub

1 rent, \$50 million of 503(b)(9)'s.

2 In addition, the parties agreed to Paragraph 14(a)
3 of the final DIP order. That's where it says the debtors are
4 authorized, but not directed, to draw on the ABL to cover
5 those amounts at various, you know, stages throughout the
6 budget period.

7 We left that hearing, and I believe certain of the
8 debtors' landlords and vendors left that hearing with some
9 degree of comfort that admin claims would be paid in these
10 cases. And based on my understanding, many of these vendors
11 and landlords continued operating and doing business with the
12 debtors.

13 Fast-forward to the sale process. While the
14 committee supported the deal with Nexus, it was not ignorant
15 to the cash shortcomings of the deal. It comprised only \$2.5
16 million of cash above and beyond the payment of the pre- and
17 post-petition secured debt, as well as the assumption of
18 other liabilities. And given the lack of anticipated
19 distributable proceeds that that deal would have provided to
20 a then claims pool that we estimated at over half a billion
21 dollars -- I assume it's much larger today, certainly, with
22 this news --

23 THE COURT: What was --

24 MR. ALBERTO: -- we turned our attention to --

25 THE COURT: What was the claims pool? I'm sorry.

1 MR. ALBERTO: At that point -- I'm using very rough
2 numbers -- I believe it was over 500 million at that time,
3 Your Honor, is a fair estimate. The bar date had not run.

4 But recognizing the fact that that's a big
5 denominator, we looked at other ways to increase potential
6 recoveries for unsecured creditors. The most obvious and one
7 of our largest work streams was to investigate potential
8 claims that could be brought against others, including the
9 pre-petition secured creditors.

10 On November 18th, Your Honor, we filed a motion to
11 extend the challenge period for a short period of time to
12 continue that investigation. The debtors and lenders
13 objected to that motion. And you heard from Nexus at the
14 sale hearing, Judge, that granting the committee's request
15 even for a short extension might threaten closing of the
16 sale.

17 And Your Honor, that was a very powerful argument,
18 and the committee certainly understands why Your Honor did
19 not grant its motion to extend the challenge period as a
20 result of that argument. Later that day, we told the debtors
21 we would lay our swords down, not appeal, and work with the
22 company collaboratively to close this deal.

23 Fast-forward, here we are today. Nexus didn't
24 close, the debtors don't have a clear path forward or a date
25 by when they are likely to select one. All the while, admins

1 continue to accrue.

2 The challenge period has expired. The lenders have
3 the full benefit of a 506(c) waiver and other protections
4 granted to them under the final DIP order. They've received
5 the benefit of their bargain, I think they're fully
6 protected. And creditors are sitting here wondering what's
7 next.

8 I would implore the parties that it's time to make
9 a decision. These cases should not languish without a clear
10 direction. I don't believe that's anyone's intent, but it is
11 certainly the committee's stated position that we want a
12 decision made fast. We would like a stated path forward and
13 the presentation of a wind-down budget or other acceptable
14 budget, so that we know where these cases are going, and so
15 that creditors don't feel like they're hanging in the wind
16 and, you know, just being trampled on here.

17 THE COURT: Mr. Alberto, has there been any -- I
18 heard what counsel for the debtor had to say with respect to
19 a path forward, but obviously, that wasn't a very fine point
20 on process. So has there been those types of discussions?

21 MR. ALBERTO: They were continuing in the hallway
22 before this hearing, Judge. And given the public nature of
23 this hearing, I'm not very comfortable sharing where they
24 stand. But suffice it to say, you know, what you heard from
25 Mr. Resnick is accurate.

1 We have been told that there -- in fact, I think
2 we've been given the bid that Mr. Resnick talked about on the
3 record. And we support the debtors' efforts in trying to
4 find another white knight type purchaser here, but --

5 THE COURT: But not at the expense of
6 administrative creditors.

7 MR. ALBERTO: It's a double-edged sword, Your
8 Honor. I wish we could give them as long as they need. But
9 you know, creditors are being asked to undertake further
10 expenses here. Landlords are being asked certain things,
11 vendors are being asked to ship products. And you know,
12 sitting here right now, Your Honor, we don't have a budget
13 that covers any of these admin expenses.

14 (Participants confer)

15 MR. ALBERTO: Again, not asking for anything today,
16 Your Honor, other than to say --

17 THE COURT: Well, I --

18 MR. ALBERTO: -- I think speed is important.

19 THE COURT: I --

20 MR. ALBERTO: We should make a decision and --

21 THE COURT: I think speed is very important. I am
22 not going to run an administratively insolvent case.

23 MR. ALBERTO: One other thing I should mention,
24 Your Honor, as part of the agreement to hold today as a
25 status conference on our motion, the parties have agreed that

1 we set an outside date by when, subject to the Court's
2 availability, the motion would be heard. It does not
3 prejudice the committee. I believe, on 24 hours --

4 THE COURT: The motion to convert.

5 MR. ALBERTO: The motion that --

6 THE COURT: Is that the --

7 MR. ALBERTO: There's two aspects, Your Honor:
8 It's to compel compliance with the final DIP; or, in the
9 alternative, convert. We are not advocating for conversion
10 today, that is not the committee's goal today. Let me be
11 clear about that. But we do want to set an outside date by
12 when this motion will be considered, subject to the
13 committee's ability, on notice to the company, to ask Your
14 Honor for an earlier date. But we would like to set, subject
15 to Your Honor's availability, a hearing the week of January
16 6th, to go forward substantively with the committee's motion.

17 THE COURT: Okay. Let me hear from others.

18 MR. ALBERTO: Of course. Thank you, Your Honor.

19 THE COURT: Put a pin in that.

20 MR. ALBERTO: Sure.

21 THE COURT: Let's not leave today without ...

22 MR. GOLD: Good afternoon, Your Honor.

23 THE COURT: Good afternoon, Mr. Gold.

24 MR. GOLD: Ivan Gold of Allen Matkins on behalf of
25 multiple landlords at Docket 1353.

1 To a certain degree, Your Honor, we were the canary
2 in the coal mine with our request for a status conference.

3 My clients fall into a number of buckets here,
4 we've used that phrase throughout the case. I've got some
5 landlords who are in the first groups of rejected leases that
6 were the objective of the stub rent resolution reflected in
7 Paragraph 14(a) of the final DIP order. Those were leases
8 that were rejected prior to October 31st. I've got clients
9 who are -- were part of the Nexus transaction. I've got
10 clients who have unpaid post-petition expenses, the year-end
11 stuff, taxes and the like. So we kind of go the whole
12 spectrum.

13 Your Honor, there's a pop song from the last decade
14 named "I have questions." And I want to throw out some
15 questions that I think we need to address, either today or at
16 the next hearing. I think it's important to have our agenda,
17 if you will, of questions. And what can be answered today
18 should be answered today; what can't be answered today needs
19 to be prioritized.

20 So, of course, the big quest -- one question is how
21 did we get here. That's an important question that,
22 ultimately, deserves attention, but it's not a question we
23 need to answer today, I want to make that clear. The more
24 important questions are: Where are we right now? And where
25 are we going? And that's been addressed by Mr. Resnick and

1 Mr. Alberto to a certain extent.

2 But there are certain things we know:

3 We know, from the committee's motion, that the
4 debtors are now in default under the DIP milestones. The
5 debtors acknowledge that.

6 We also know that the debtors' use of case has not
7 yet been terminated by the secured lenders, at least as of
8 now.

9 We know that the debtor is subject to a five-
10 business-day notice of termination. And I would suggest to
11 you that that sword hanging over all of our heads is no way
12 to run a case.

13 One question is: Do the debtors currently have the
14 use of cash collateral? If so, what are the conditions or
15 limitations on its use going forward?

16 Do debtors currently have access to the DIP
17 facility? Same question: If so, what are the conditions or
18 limitations on those disbursements?

19 I'll ask the question, I've been told the answer.
20 Are debtors incurring additional default interest at this
21 point? The debtors have advised us the answer to that
22 question is yes.

23 Did debtors make any stub rent payments under
24 Paragraph 14(a) of the final DIP order and as provided in the
25 budget for the week ending 12/7? What other budgeted

1 payments in the budget accompanying the final DIP order were
2 not made? Who is deciding which budgeted payments are to be
3 made and which ones to skip?

4 Have the secured lenders been paid anything since
5 entry of the sale order?

6 What is the status of the sale order at this point?
7 We have a transaction that did not close. We have a public
8 announcement that transaction did not close, nothing on the
9 docket, but we have the public announcement in connection
10 with the 8-K filing and the press release. So we have an
11 order about assignment of leases that did not occur. We have
12 an order about sale of causes of action that did not close.

13 We have to presume, as I think your comment just
14 did, this case is administratively insolvent. But the thing
15 we need to realize is it's only going to get worse. And let
16 me give you one example of how it's going to get worse.

17 The DIP order contemplated payments of stub rent
18 for the month of September for a subgroup of the debtors'
19 leases, those leases that were rejected at either the end of
20 September, the first month of the case, or the end of
21 October. Now, under the new transactions contemplated,
22 which, according to Mr. Resnick, would involve a subset of
23 the Nexus transaction -- the Nexus transaction between seven
24 and 800. We don't know, as we stand here today, is one of
25 these alternative transactions going to have 200, 300. But

1 we do know that those leases that were part of Nexus, stub
2 rent was held in abeyance as part of the cure. And at least
3 several hundred of those landlords will now move into a
4 different bucket. So the stub rent number -- and that's
5 separate and apart from other admins, that's separate and
6 apart from 503(b)(9) -- that number is going to grow.

7 So what is the path forward? As Mr. Alberto said,
8 we do not have a wind-down budget. We do not have a time
9 table. At some point, the never-ending quest to preserve
10 optionality has to come to an end because the game of musical
11 chairs, at some point, is going to stop, and there's a lot of
12 administrative creditors who are going to be standing there
13 with no place to sit. Who is picking and choosing who to pay
14 going forward? Are we improperly creating sub-priority
15 classes without us knowing who they are?

16 So some of these questions can be and should be
17 answered today. Those that can't be because decisions
18 haven't been made or the information is not readily available
19 need to be prioritized, they need to move to the top of the
20 list. Whatever hearing date the Court sets on the
21 committee's motion, January 6th or something during that
22 week, we need answers to every single one of these questions
23 by that date because, as Your Honor said, you don't want to
24 run an administratively insolvent case.

25 Your Honor, I stand here recognizing I have more

1 gray hair than anyone in this courtroom. And one fortunate
2 or unfortunate consequence of that is I experienced Sears, I
3 experienced Toys 'R Us, and in this court I experienced
4 Linens 'N Things. And we all know how those cases ended and
5 it wasn't well. And so what I'm saying is: What guardrails
6 do we need to install going forward to prevent this case from
7 joining that list? Thank you, Your Honor.

8 THE COURT: Thank you.

9 Ms. Casey.

10 MS. CASEY: Good afternoon, Your Honor. Linda
11 Casey on behalf of the United States Trustee.

12 Unfortunately, I was not one of the parties that
13 have been kept in close contact since December 3rd and have
14 only known about this slightly longer than you have and have
15 not had sufficient time to consult with my client.

16 What -- briefly, you know, under 1112(b), when you
17 have substantial continuing loss to the estate and no
18 likelihood of rehabilitation, the cases should convert. We
19 should absolutely not run an administratively insolvent
20 estate, nor should we allow an out-of-court determination as
21 to who the preferred administrative creditors are.

22 So, for today, all I can say is that we reserve our
23 right to seek conversion under 1112(b), and potentially to do
24 so on an expedited basis. Thank you.

25 THE COURT: Okay. Thank you.

1 I understand there are people on Zoom, but I don't
2 see any hands raised. So, if you're on Zoom, can you appear?

3 MS. MASHBURN-MYRICK: Danielle Mashburn-Myrick.
4 Are you able to hear me?

5 THE COURT: Yes, I can hear you.

6 MS. MASHBURN-MYRICK: If I may, we represent Peak
7 Living, Inc., Delta Furniture Manufacturing, LLC --

8 THE COURT: I'm sorry. There is some background.
9 If you're on Zoom and your phone is not mute, can you please
10 be mute until you're called?

11 Okay. Could you please start over? Because I
12 couldn't hear what you were saying.

13 MS. MASHBURN-MYRICK: Yes, Your Honor. Danielle
14 Mashurn-Myrick for Peak Living, Inc., Delta Furniture
15 Manufacturing, LLC, and Independent Furniture Supply Company,
16 Inc. My *pro hac vice* admission is pending, Your Honor, and
17 my local co-counsel is in another evidentiary hearing this
18 morning, I believe.

19 We intend to join the committee's motion. We saw
20 the utilities had also joined the committee's motion.

21 And I speak now just to point out one of my clients
22 entered a critical vendor agreement with the debtors post-
23 petition. My clients jointly, post-petition, have delivered
24 almost \$10 million in goods to the debtors.

25 The gentleman who just spoke about the continuing

1 and deepening insolvency spoke directly to one of our primary
2 concerns. Are the debtors receiving additional goods today,
3 tomorrow, and the next day that are also going to assert
4 administrative expense, priority, and potentially
5 disadvantage creditors who have already shipped products and
6 goods to the debtors.

7 So we will be joining that motion, but I wanted to
8 speak for that constituency, as well. I'm sure we're not the
9 only ones in that bucket.

10 THE COURT: Okay. Thank you.

11 Mr. Johnson.

12 MR. JOHNSON: Thank you, Your Honor. Russell
13 Johnson on behalf of Baltimore Gas and Electric and 27 other
14 utility companies. Thank you for entering my *pro hac vice*
15 order and allowing me to appear via Zoom.

16 Your Honor, I don't want to repeat all the
17 arguments that have been made. I think our joinder sets
18 forth the fact that (indiscernible) amounts to my clients
19 haven't been paid, even with termination notices for
20 nonpayment of (indiscernible) on deposits. I don't think
21 I've ever seen anything like this, other than -- I may have
22 as much gray hair as the gentlemen mentioned before -- in
23 other cases, where termination notices are going out and the
24 debtors' counsel (indiscernible) payment agent and they're
25 just ignoring them. So it's --

1 UNIDENTIFIED: All I did was I took out any sale --

2 THE COURT: Excuse me. Someone is on the line who
3 is not mute. Can you please mute your line?

4 My apologies for interrupting you, Mr. Johnson.

5 MR. JOHNSON: That's okay, Your Honor.

6 So, Your Honor, I echo, I think it was Mr. Gold's
7 questions that need to be answered. I don't want to
8 (indiscernible) need to. Thank you, Your Honor.

9 THE COURT: Thank you.

10 Ms. Rogers.

11 MS. ROGERS: Thank you, Your Honor. Beth Rogers
12 for Simmons Bedding Company.

13 I just want to point out, as did one of the other
14 attorneys, my client also entered into a critical vendor
15 agreement and has shipped almost an additional \$4 million in
16 product for which it has not been paid, and they're being
17 asked to ship more product. So I really am very concerned
18 about where this case is going to go.

19 THE COURT: Thank you.

20 Is there anyone else on Zoom that wants to be
21 heard?

22 (No verbal response)

23 THE COURT: Okay. I'd like to hear from the
24 debtors about administrative payments. And I don't know --
25 look, I don't know if the parties had a chance, if you need

1 to take a break and go talk to parties in the hall. But I
2 want to assure that, between now and a scheduled hearing, I
3 want to know what -- I don't want deepening insolvency. So
4 can you provide a little more color?

5 MR. RESNICK: Absolutely, Your Honor. And we're
6 very sympathetic to the concerns raised by and on behalf of
7 various administrative creditors.

8 Your Honor, starting tomorrow, the debtors are
9 commencing a process to sell all of the inventory that's
10 currently in their stores. They're not expecting other vend
11 -- you know, vendors to ship new items. We're not incurring
12 any -- to my knowledge, it's not our intent to be incurring
13 any admin expenses, other than those involved by necessity in
14 commencing these -- you know, these GOB sales. So, while, of
15 course, any day that a debtor operates, there are certain
16 administrative expenses that are going to accrue, the debtors
17 are not out there expecting, you know, new product to be
18 shipped or anything like that.

19 THE COURT: What about landlords?

20 MR. RESNICK: My understanding is that the
21 expectation is that landlords will continue to be paid
22 currently for current rent. The lenders can speak to that if
23 they have a different view, but that's my understanding is
24 that is our intent to pay landlords currently as -- you know,
25 as needed, since we are currently conducting the -- you know,

1 the sales in the various locations.

2 And I -- just to state the obvious, Your Honor, we
3 believe this pathway maximizes the value of the estate and
4 will maximize the recovery to all creditors. You know, at
5 this point, if the debtors end up administratively insolvent,
6 it's still better to maximize the value here, so that we can
7 pay as much as possible to all administrative creditors, and
8 that's our goal and our effort.

9 We're trying to save as much of a business as we
10 can and we're trying to maximize the value, particularly
11 leading up to the holiday, in order -- you know, for the
12 benefit of all our constituents. I can't promise that it's
13 going to result in, you know, ultimate administrative
14 solvency, it may very well not, but we do believe very
15 strongly that it will maximize value. And I don't -- I
16 haven't heard anybody suggest otherwise.

17 THE COURT: Do the debtors have continued use of
18 cash collateral? Where do you stand with the DIP?

19 MR. RESNICK: So we're currently in default under
20 the DIP. The DIP lenders have not -- to their credit, they
21 have not issued a termination notice, so it's just a regular
22 default.

23 We are operating under a situation where the debtor
24 -- where -- my understanding is the lenders do have control
25 rights over our expenditures, and we've been operating

1 constructively with them to be able to make the payments that
2 we need to, in order to maximize the value here.

3 THE COURT: Well, I'm concerned about the selection
4 of what -- which administrative creditors get paid.

5 MR. RESNICK: That's a fair question, Your Honor.
6 We're making the payments that we believe we need to in order
7 to conduct -- in order for the debtors to operate under the -
8 - under its current construct, and that's being, you know,
9 determined by the debtors with the lenders. And if there's
10 any additional process around that, we're happy to discuss.
11 But that's our current posture.

12 (Pause in proceedings)

13 THE COURT: Talk to me in more detail about how you
14 would anticipate proceeding forward?

15 MR. RESNICK: Sure. So I think it's several paths,
16 right? As I've mentioned, one path -- one thing that we're
17 definitely doing is, you know, all stores or 870 stores,
18 we're starting the GOB sales, you know, tomorrow, as soon as
19 we possibly can. So we're going to file the notice on the
20 docket of the list, it's going to include all of the stores,
21 we're going to file that tonight. And we're not wasting any
22 time, given the holidays, so we're going to start that
23 tomorrow.

24 At the same time, I know there are various parties
25 that are working very hard in a going concern bid. When I

1 say "going concern," that means, you know, it probably won't
2 preserve all, you know -- what is it, eight, 900 stores that
3 we were hoping that the existing Nexus sale would preserve?
4 But our hope that it -- is that it would be as many of the
5 stores as possible.

6 And so what we have now are we have Nexus, it's
7 still at the table and about a possible smaller transaction.

8 We have GBRP that has submitted to us a bid.
9 Negotiations are ongoing. We have -- and my understanding is
10 that the lenders are supportive of that bid and we have gone
11 -- and the committee has seen the bid and I think -- you
12 know, I don't want to speak for them, but I think -- we've
13 been going back and forth with GBRP on that bid.

14 That bid does say that they would intend to work
15 with at least one operating partner, who would assume a
16 substantial amount of leases, and so that certainly is a
17 possibility. And this is not a -- this didn't come out of
18 left field. This was, essentially -- in a slightly different
19 form, this was our backup bid --

20 THE COURT: At the auction?

21 MR. RESNICK: -- at the auction.

22 And then, third, as soon as -- you know, Nexus
23 raised the issue of needing additional capital. Both Nexus
24 and the debtors worked very hard with some of the debtors'
25 most important counterparties and vendors, those who would,

1 you know, potentially be interested -- well, stand a lot to
2 lose with -- if Big Lots went away, and also may be
3 interested in putting in capital. And discussions were very
4 positive with some of those and continue to be positive, and
5 so that's a -- sort of a third pathway and alternative.

6 We understand we do not have a lot of time. Nobody
7 is suggesting that this is something that could happen, you
8 know, beyond, you know, a short number of weeks from now.
9 And so people are working round the clock on these pathways.
10 We do think, if they happen, they will, unquestionably, we
11 think, hopefully, if we can negotiate them successfully, you
12 know, be the best chance at maximizing value here and
13 improving recoveries for whomever the stakeholders, you know,
14 may be, whether it's admin creditors or whomever at that
15 point. So that's our pathway.

16 THE COURT: Mr. Alberto.

17 MR. ALBERTO: Thank you, Your Honor. Justin
18 Alberto on behalf of the committee.

19 I neglected to say one thing before and I should
20 have. The UCC believes it is value-maximizing at this time
21 to commence GOBs at the stores. It's an unfortunate
22 realization, but we do believe that that is part of the path
23 forward. It is prudent at this time to do that, we agree
24 with Mr. Resnick and the debtors. My points are -- that I
25 made before are simply that it is both prudent and necessary

1 to come up with a larger path forward now. But we agree with
2 the commencement of GOBs at this point.

3 THE COURT: Okay. Just one minute. Ms. Rogers'
4 hand -- had her hand up, so I'll hear frm Ms. Rogers and then
5 I'll hear from others. Everyone will have a chance to be
6 heard.

7 Ms. Rogers?

8 MS. ROGERS: Thank you, Your Honor.

9 I'm concerned about what authority the debtor has
10 at this point to do going-out-of-business sales without any
11 kind of notice or motion, at least that I'm aware of. And if
12 product is going to be sold on a going-out-of-business
13 concern, shouldn't creditors like my client have a right to
14 reclaim that product for which they have not been paid?

15 THE COURT: Do you want to address that now?

16 MR. RESNICK: Certainly, Your Honor.

17 So, look, on the first point, so we plan on
18 conducting the sales in accordance with the GOB sale motion.
19 You know, admittedly, there are notice provisions here, and I
20 think it's Paragraph 35, that mentions a five-day period for
21 the landlords to object.

22 Historically, Your Honor, we've closed -- my
23 understanding is we've closed 300 stores. We've only
24 received less than a handful of objections in that time, and
25 they were all resolved consensually. And so our view is, you

1 know, we're following the -- you know, the spirit of the
2 store closing motion and the substance is there, but we don't
3 believe that the estate can afford to wait five days before
4 commencing the sales.

5 If Ms. Rogers or any of the other landlords have
6 objections within that five-day period, we will certainly --
7 we're certainly happy to hopefully address them consensually,
8 as we have with a few others that haven't historically, or be
9 before Your Honor, if -- you know, if need be. But the
10 value-maximization that's so important for starting tomorrow,
11 the debtors believe that is necessitated by just the
12 realities.

13 THE COURT: Okay.

14 MR. RESNICK: On the second point, I think, on
15 reclamation, my understanding is that that's subject to a
16 lender's prior lien, but that's my understanding of that
17 issue. And I think -- you know, I think there's a
18 reclamation provision of the Code that deals with goods
19 delivered, I think 45 days before the petition date. I
20 assume that the goods we're talking about now are post-
21 petition goods, so that's my understanding of the issue. But
22 I am not prepared to argue that today.

23 THE COURT: Address it.

24 Ms. Heilman, did you ...

25 MS. HEILMAN: Good afternoon, Your Honor. Leslie

1 Heilman, Ballard Spahr, for the record, on behalf of a number
2 of landlords, including Mr. Gold's clients as Delaware
3 counsel.

4 Your Honor, I do rise, I wanted to address the
5 process question, which I -- Mr. Resnick did just introduce
6 to the Court. Your Honor, the order does say that there has
7 to be five days' notice, and that point was actually
8 expressly negotiated by the landlords at the first-day
9 hearing.

10 So I think we are reintroducing new law here, Your
11 Honor, is the fact that one of the reasons that five-day
12 notice is required is that there are concerns and objections
13 to the going-out-of-business sales that landlords typically
14 would raise to any order and authorization to conduct,
15 subject to we resolve those orders -- those objections
16 through our side agreement.

17 And the five-day notice is specifically so that
18 landlords can negotiate and enter into a side agreement
19 before those sales commence. And those side agreements speak
20 to things of exterior signage, use of the premises outside
21 the lease, may -- balancing the interests of other customers
22 in the shopping center, the number of signs that go into the
23 stores, the way the actual sales are conducted at the
24 individual lease location.

25 And so, Your Honor, I would say that there is harm

1 in just allowing the debtors to ignore the process that was
2 implemented in the going-out-of-business sales order to
3 commence their sales tomorrow, without giving notice to the
4 landlords and an opportunity to negotiate those side
5 agreements, which are necessary to be done because, once the
6 exterior signage is hung inconsistent with the side letter,
7 the damage has already been happening. And if we're talking
8 about increased harm and administrative expenses to the
9 estates if the signage is hung and there's damages to the
10 front of the building, that, in addition, is another
11 administrative expense that this estate is going to -- is
12 going to incur.

13 In addition, Your Honor, as we stand here today, I
14 know of at least a handful of my clients that have defaulted
15 the debtor for non-payments of rents, property taxes in the
16 post-petition period. So there's additional administrative
17 expenses that have been budgeted, but have not been paid in
18 these cases, in addition to the stub rent.

19 In addition, Your Honor, they have utilized the
20 stub rent in these cases, the nonpayment of the September
21 rents, to pay other post-petition expenses in these estates,
22 which is why the agreement, pursuant to the final DIP order,
23 was so important, that there would be budgeted amounts and an
24 opportunity to pay those administrative claims in exchange
25 for the 506(c) waiver.

1 So, Your Honor, we've talked a lot about, you know,
2 needing to maximize value, which I do agree we do need to
3 pivot and do something to hopefully, maybe have this company
4 survive. But Your Honor, we can't do this on the backs of
5 the administrative creditors who have not been paid because
6 what we have done here is we've prioritized different
7 administrative creditors. And we are going to -- if we just
8 continue to push forward in trying to maximize value, but not
9 put a plan in place to pay the administrative creditors both
10 the administrative expenses of the next wave of sales and the
11 ones that are still unpaid, Your Honor, we're going to be in
12 the same position a week from now, two weeks from now, on the
13 edge of a conversion. And it's those administrative
14 creditors whose monies -- whose money was used to pay other
15 administrative creditors still not being paid.

16 So my suggestion, Your Honor, is we do need to hit
17 a pause button and try to put a plan in, meaning, if we do
18 commence sales, the proceeds of those sales should be
19 reserved, or any addition -- no other amounts are going out
20 of the estate, except for the administrative expenses of
21 maybe the GOB sales, which is the rent, the employees, and
22 the like. But all other proceeds should be held until such
23 time as we can determine who should be getting those proceeds
24 and whether there's sufficient funds to pay administrative
25 creditors, all administrative creditors in these estates.

1 And Your Honor, Mr. Gold did mention some of the
2 past cases. I, too, have been involved in all those cases.
3 And I stood here in Linens 'N Things arguing against
4 confirmation when there was a deficit of about \$40 million in
5 stub rent that remained unpaid on confirmation, and then the
6 debtors could not confirm their plan because of the deficit
7 of administrative creditors. And so the only administrative
8 creditors in Linens 'N Things that were not paid were the
9 landlords, whose spaces were used to conduct all the going-
10 out-of-business sales to liquidate the debtors' inventory and
11 the like, and those are the ones left holding the bag on
12 conversion to a Chapter 7. Thank you, Your Honor.

13 THE COURT: Mr. Gold.

14 MR. GOLD: Thank you, Your Honor. Just briefly.

15 We need a freeze until we have a wind-down budget.
16 It's a challenge for the debtors to multi-task right now, I
17 appreciate that, while they continue to explore what I'll
18 call "bulk sales." I don't think "going concern" is an
19 accurate statement at this point. But the fact is we need a
20 wind-down budget that you and the committee and interested
21 parties can look at and establish guardrails for this case
22 going forward. Good intentions and we're doing the best we
23 can and we're prioritizing is all nice, but we need more
24 clarity given the severity of the situation here. Thank you.

25 THE COURT: Anyone else in the courtroom that wants

1 to be heard?

2 (No verbal response)

3 THE COURT: Okay. Let me hear from Mr. Fox.

4 MR. FOX: Good afternoon, Your Honor. Steven Fox,
5 Riemer & Braunstein, on behalf of Gordon Brothers Retail
6 Partners.

7 Your Honor, I'd like to address the Court in two
8 different ways today: First, if I could respond in our
9 capacity as a consultant to the debtors, in connection with
10 their past conduct of going-out-of-business sales or store
11 closing sales Mr. Resnick had mentioned and, in part, in
12 response to Ms. Heilman's remarks.

13 As Mr. Resnick indicated, the debtors have
14 conducted over 300 store closing sales of locations
15 throughout these cases with the assistance of the consulting
16 services from GBRP. We've done that seamlessly, smoothly,
17 and without any controversy, and certainly without objections
18 to the landlords because you haven't seen any from the
19 landlords in these cases.

20 With regard to the ability to satisfy the landlords
21 with regard to side letters, we have been successful to date
22 in each instance in which a side letter has been requested.
23 That has happened both before and after the commencement of
24 the store closing sales in each phase that have been
25 conducted to date.

1 I have every confidence, given our familiarity with
2 both process and people who are involved in these cases, that
3 that process will continue without any delay and certainly
4 without any controversy. We know all the players, we've done
5 it in dozens and dozens of cases, including this one, and
6 there's no reason to believe that that won't continue on a
7 cooperative basis going forward.

8 And certainly, as the parties recognize, in the
9 event that we are unable to reach an agreement with any
10 particular landlord on the terms of a side letter, this Court
11 is always available on an expedited basis, as you've
12 demonstrated, to address any of those concerns, and we would
13 expect that that will become unnecessary as we go forward,
14 but it still is an option for the landlords.

15 With regard to the request for a pause or a delay
16 or a freeze, as Mr. Gold indicated, nothing along those lines
17 can produce anything positive for any of the creditors or the
18 debtors of these estates. The delay in missing out on this
19 last critical period before the holiday is a value-
20 destructive step, not a value-maximizing step, as Mr. Alberto
21 seems to agree.

22 You know, with regard to the plan for going forward
23 and closing stores, it would be everybody's intention
24 involved with the estates, including GBRP, that all go
25 forward administrative expenses associated with the conduct

1 of the going-out-of-business sales would be satisfied. I
2 believe that is -- while I can't put words in the mouths of
3 the lenders, I believe that's certainly the intent. And we
4 understand the principle of do no further harm.

5 With regard --

6 THE COURT: What do you mean by that?

7 MR. FOX: -- to just pivoting?

8 THE COURT: "Going forward expenses would be
9 satisfied." What does that mean?

10 MR. FOX: I don't have visibility into the
11 budgetary process, Your Honor, from the store closing
12 consultant side. But you know, it is fairly commonplace and
13 would be expected that there would be no further harm done
14 from conduct of the store closing sales, and that is
15 everybody's expectation in this process.

16 But pivoting to some of Mr. Resnick's other
17 remarks, in terms of the options that the debtors are
18 exploring, as Mr. Resnick mentioned, GBRP was a participant
19 leading up to the auction that ultimately led to Nexus being
20 selected as the successful bidder. While GBRP was not deemed
21 a qualified bidder at the time, GBRP has, nevertheless,
22 continued to be actively engaged with the debtors during this
23 period, exploring different options.

24 When the parties recognized that the Nexus
25 transaction might be in jeopardy, GBRP has submitted an

1 alternative proposal, different from what was presented back
2 in connection with the auction, and we continue to be
3 actively engaged with the debtors to see if there's a method
4 by which we can come to a final agreement.

5 That final agreement would contemplated, as has
6 been suggested, that one of our joint venture partners in
7 this transaction, perhaps, would succeed to as many as 400 or
8 more stores continuing to operate, employees at those stores
9 continue to have employment, the variety of corporate
10 employees necessary to support that process continue to be
11 employed, perhaps the inclusion of a handful of distribution
12 centers be included in that, all of which would be a very
13 positive value-maximizing result here.

14 It doesn't solve all the problems, and I want to be
15 clear on that, but it certainly is a better outcome if we can
16 -- if it can come to fruition, than anything else that's
17 presented as alternatives. And we will continue and we are
18 committed to continue to work with the debtors to see if we
19 can get that to a final conclusion and have it be presented
20 to the Court at the earliest possible date. You have our
21 commitment that we will continue to work earnestly and around
22 the clock to make that happen, and we trust that all the
23 other parties involved in the case will continue to do the
24 same.

25 I'm happy to respond to any questions Your Honor

1 may have, but we do believe, both in our role as consultant
2 to the debtors in conducting store closing sales, as well as
3 a prospective transaction partner with the debtors, that any
4 delay in commencing the store closing sales is detrimental to
5 the interests of all interested constituents here.

6 MR. VENTOLA: Good afternoon, Your Honor. John
7 Ventola of Choate, Hall & Stewart on behalf of PNC, the agent
8 for the DIP lenders.

9 So there's been various references to the "lenders"
10 throughout these -- the hearing today, so I just wanted to
11 try to address a couple of them briefly.

12 But first, Your Honor, I want to say it's always a
13 good day when I find myself agreeing with the committee's
14 counsel, and do on two really important points that Mr.
15 Alberto raised. I was very happy to hear that the committee
16 does support the GOBs moving forward quickly. We have one
17 weekend left before the biggest -- during the biggest
18 shopping period of the year, so I think the committee's
19 support of that goes -- really resonates, hopefully, with
20 everyone how important it is to get these sales going, and
21 any attempt to pause that or the like is just not feasible or
22 practical, and certainly is not good for the value of these
23 estates, so I was happy to hear that.

24 And then, second, Your Honor, we also agree with
25 the committee that the debtors do need to make a final

1 decision very soon. This is an extraordinarily fluid
2 situation. We have also worked very closely with the
3 debtors' professionals and we appreciate all the
4 communications with them, but a final decision needs to be
5 made soon. But we can't wait and try to somehow delay these
6 sales from going forward. The debtors made that decision
7 under these tough circumstances, I'm sure it was not an easy
8 decision by the board, but they made it, and that's what we
9 need to do, Your Honor.

10 And then, second Mr. Resnick asked me to confirm
11 this, I believe, earlier. It is accurate there is a default,
12 I don't think there's any dispute about that, under the DIP,
13 so we issued a default notice. We have not terminated the
14 use of cash collateral, Your Honor. We have the right to, as
15 Mr. Resnick alluded to, but we haven't and we don't want to.

16 We want to keep doing what we have been doing with
17 working with all the stakeholders to keep this case afloat
18 and maximize value. And if there is a going concern or some
19 version of a going concern sale to happen, I think it has to
20 happen extraordinarily soon. But we're all for that, if it
21 can be made to happen. But to try to stop this right now,
22 Your Honor, is just not practical.

23 So I'm happy to address any questions you may have
24 about the DIP, Your Honor, but that's --

25 THE COURT: Well --

1 MR. VENTOLA: I did want to make those points.

2 THE COURT: Well, I am a little concerned that this
3 sale milestone was the 13th --

4 MR. VENTOLA: Yes.

5 THE COURT: -- and the DIP has been in default
6 since the 14th, and here we are the 19th without really a
7 clear path forward, and with no one making any representation
8 on this record as to satisfaction of administrative claims.
9 And I just heard counsel said going forward expenses would be
10 satisfied. I hear that from a party who doesn't hold the
11 purse strings.

12 So, while it's good to talk about this, and I don't
13 disagree that, generally, maximizing value is where we want
14 to be, but at the same time, I can't hold the door open for
15 three weeks and let money go out of this estate and run an
16 administratively insolvent estate. So I don't feel like I'm
17 getting any answers to the questions that are being raised.

18 And maybe it's not fair, I think you just happen to
19 be the last person who's at the podium.

20 (Laughter)

21 THE COURT: But I -- first of all, I wanted to take
22 a break and go look at the prior GOB sale order because I
23 don't remember -- I recall that was entered on the first day
24 of this case. I don't even recall what it says in it, in
25 terms of notice to parties.

1 And I do appreciate, you know, the landlords are
2 taking a big risk here and so are the other administrative
3 creditors, including professionals, in this case. So I
4 applaud parties wanting to go forward in the best path
5 forward to maximize value, but I need to hear a little bit
6 more.

7 MR. VENTOLA: Thank you, Your Honor. Do want to
8 take a break now?

9 THE COURT: I think that would be beneficial
10 because I'm not sure -- I mean, candidly, this was all to me
11 walking in the courtroom or sitting in the courtroom and
12 hearing it. And I don't know if you've had an opportunity to
13 talk with some of the parties.

14 You know, obviously, this is going to take
15 modification of a prior order, if the prior order had
16 parameters, in terms of notice and that type of thing. So I
17 think it would be prudent for the parties to take a little
18 bit of a break to talk about this, and I'd like to look at
19 the prior order.

20 Is there anything else I should be looking at?

21 MR. RESNICK: I don't think so, Your Honor. And --

22 THE COURT: Well, has the debtor been working on a
23 budget?

24 MR. RESNICK: Yes.

25 THE COURT: Okay.

1 MR. RESNICK: Absolutely. And we're working with
2 the lenders on it and we'll be sharing it with the committee,
3 of course, yeah.

4 THE COURT: I mean, is that a today issue? What I
5 do not want to -- I don't want -- obviously, time is of the
6 essence. This is what I would categorize as a melting ice
7 cube.

8 MR. RESNICK: Yeah.

9 THE COURT: We need to move expeditiously. And
10 unfortunately, this is a bad time of year, in terms of
11 getting a hold --

12 MR. RESNICK: Yeah.

13 THE COURT: -- of parties.

14 MR. RESNICK: Yeah. Your Honor, and just to add
15 clarity then to -- based on this conversation, Your Honor's
16 statements and the statements of the other parties, and since
17 Your Honor is going to take a look at the order quick --
18 during the break, just to add clarity to the situation.

19 So Your Honor will look at Paragraph 35, in
20 particular. And to the extent it's required, I guess we
21 would deem this to be an emergency oral motion to allow the
22 closings to occur concurrently with the five-day notice
23 period.

24 THE COURT: Okay.

25 MR. RESNICK: It looks like Mr. Abrams has a ...

1 THE COURT: Mr. Abrams?

2 (No verbal response)

3 THE COURT: Sorry, you're not -- you're on mute.

4 MR. ABRAMS: I just want to add a little context.

5 This was a ridiculously, highly leverage transaction that the
6 Big Lots management signed onto. This was predictable from
7 before the transaction was ever accepted by management.
8 Management has basically submitted SEC filings that indicated
9 it had a billion dollars plus of equity, when it did not.
10 The whole situation is bizarre.

11 Their excuse for not having paid stub rent, 45, 65,
12 75 days ago was ridiculous. As recently as a couple -- as
13 yesterday and two days before, they -- they filed bogus
14 agendas for this hearing, knowing that none of those matters
15 were going to be heard.

16 So I just want to state for the record that, as a
17 landlord at two properties, I have no confidence in this
18 management. I don't have -- I don't believe they have any
19 integrity. And I think that, to ask for emergency motions is
20 absolutely ridiculous. They made this bed and they need to
21 lie in it. And I think all the creditors need to be treated
22 equitably and equally, and I don't trust anybody to be making
23 a decision regarding administrative expenses, other than the
24 Court.

25 THE COURT: Thank you.

1 Mr. Gold.

2 MR. GOLD: Thank you, Your Honor.

3 To expedite your break, the store closing order is
4 at Docket 576.

5 THE COURT: Okay. Thank you.

6 MR. GOLD: And you should start at Paragraphs 34
7 and 35.

8 THE COURT: Okay. All right.

9 MR. GOLD: Thank you.

10 THE COURT: We're going to take a break. I would
11 like the debtors' counsel to have an opportunity to talk with
12 parties. How much time do you think?

13 (Participants confer)

14 MR. RESNICK: Yeah, maybe an hour.

15 THE COURT: Okay.

16 MR. RESNICK: Maybe 3 p.m.

17 (Participants confer)

18 THE COURT: Yeah, that's perfectly fine. I'd like
19 to see if the parties can move things forward a little bit.
20 So why don't we -- sorry.

21 (Participants confer)

22 MR. RESNICK: Yeah. I think --

23 THE COURT: Okay.

24 MR. RESNICK: -- 3 p.m. is perfect. Thank you,
25 Your Honor.

1 THE COURT: All right. We're going to reconvene at
2 3:05, so we're going to stand in recess.

3 MR. RESNICK: Oh, 3:05.

4 THE COURT: Thank you.

5 (Recess taken at 2:03 p.m.)

6 (Proceedings resume at 3:16 p.m.)

7 THE COURT: Okay. Please be seated.

8 MR. RESNICK: Thank you, Your Honor. For the
9 record, Brian Resnick of Davis Polk on behalf of the debtors.

10 So I'm pleased to report, Your Honor, that I have -
11 - you know, in the scheme of this case in the situation we
12 find ourselves in, I have some relatively good news, which is
13 that we were able to resolve consensually a way forward for
14 these current purposes --

15 THE COURT: Okay.

16 MR. RESNICK: -- with the lenders and the
17 committee, and we've discussed it with the landlord
18 representatives who are in the courtroom, and my
19 understanding is that they do not object. And this is
20 basically a resolution that would allow us to commence our
21 GOB sales tomorrow.

22 And so I'd like to read to you the five points of
23 that proposed resolution.

24 THE COURT: Okay.

25 MR. RESNICK: Number one, the debtors are

1 committing and are representing that we're not placing any
2 new orders from vendors, period. So that's not an issue.

3 Number two, we're going to file a budget next
4 Thursday by midnight, this is the -- Thursday, December 26th.
5 And we're going to work with the lenders and the committee
6 and our clients to -- you know, on a budget that makes sense
7 for the -- under the circumstances that we find ourselves.

8 THE COURT: So wait. You're going to file a budget
9 on --

10 MR. RESNICK: Next Thursday.

11 THE COURT: -- December 26th --

12 MR. RESNICK: Correct.

13 THE COURT: -- at midnight.

14 MR. RESNICK: By midnight on December 26th.

15 THE COURT: Okay.

16 MR. RESNICK: We would request a status conference,
17 just in the interest of keeping Your Honor and all the
18 constituencies informed about the status of the case, as
19 early as Your Honor could hear us the following week or
20 Monday the twenty -- Monday, December 30th, or whenever works
21 for Your Honor that week. We would propose that it be held
22 by Zoom, or at least parties not be penalized for appearing
23 by Zoom. I think a lot of people are going to be away that
24 week.

25 We would file a notice of additional store closings

1 today that's going to list out the remaining -- I believe
2 it's about 870 stores.

3 THE COURT: And make it clear that it's all of the
4 remaining stores.

5 MR. RESNICK: Yes, we will do that.

6 And in terms of the -- any objections that the
7 landlords may have during the five-day period, which would
8 run contemporaneously with starting the sales, GBRP commits
9 to resolving any issues with the landlords or attempting to
10 resolve them in real time, basically, in -- you know, in a
11 matter of hours, right? Getting back to landlords and not
12 using the fact that it's a weekend or that the sales have
13 commenced on -- you know, tomorrow as any sort of -- not that
14 they would, but as any reason to delay, and really use their
15 best efforts to resolve issues with landlords.

16 My understanding is that many of these landlords
17 already have side letters in place and it's a matter of
18 adding these new locations to it. And they're going to --
19 GBRP, as I understand it, is going to be commencing the store
20 closings, you know, in accordance with the side letters that
21 exist and will work out side letters with any other landlords
22 in -- basically, in -- as much in real time as is
23 practicable.

24 And then the last point, Your Honor, I would just
25 note that, you know, because this is being done in real time

1 and there are a lot of constituents, there are people on the
2 Zoom, et cetera, you know, this is without prejudice to any
3 party's rights to seek relief before Your Honor, you know,
4 during that status conference, before or after or whatever.
5 We're not trying to sort of, you know, bind people to not
6 seek relief if they want to seek relief with respect to any
7 of these things. But we would operate accordingly and start
8 the GOB sales tomorrow.

9 THE COURT: Okay. I guess it leads me back to,
10 essentially, my original concern. And maybe this is better
11 directed at PNC and 1903. But where does that stand with
12 respect to admin expenses?

13 MR. RESNICK: So that will be reflected in the
14 budget that we file next week. We have, you know, limited
15 use of our cash collateral. And happy to have the lenders
16 address their views on, you know, what should be paid and
17 what should not, but --

18 THE COURT: Was there a commitment to pay them
19 going forward?

20 MR. RESNICK: There is -- I'm going to allow them
21 to --

22 THE COURT: Okay.

23 MR. RESNICK: -- answer those questions.

24 THE COURT: And should we be escrowing funds
25 received from the going-out-of-business sales?

1 MR. VENTOLA: Good afternoon again, Your Honor.
2 John Ventola on behalf of PNC.

3 So the lend -- excuse me. The lenders know
4 expenses need to be paid. We have the chicken-or-egg problem
5 that we don't have the budget yet. That's exactly what we
6 spent the hour working on, and committing to all the parties
7 involved, including my clients, because we don't have the
8 budget right now. It's being worked on, literally, right
9 now. So it's impossible, Your Honor, for anyone to say that
10 we're going to pay everything in a budget that we haven't
11 seen yet.

12 But PNC is a regulated bank, we know how this
13 works. We have to cover expenses to allow the liquidation to
14 occur. So I'm not trying to be evasive, Your Honor, in any
15 way. We just -- we haven't seen what is being proposed to be
16 the budget.

17 We did hear today some points from landlords, which
18 I have never heard before, that some post-petition rent
19 obligations, in the broad term, haven't been paid. I was not
20 aware of that, Your Honor. But we committed with them, when
21 we see the budget, if they're not in the budget, to work with
22 them on that. So we know the freight has to be paid, Your
23 Honor, we just don't know what the freight is right now.

24 But we are very well aware, if GOBs are going to
25 continue, that we can't not pay those current expenses. So

1 I'm doing my best to honor -- to answer, Your Honor.

2 THE COURT: I think you're committing, but you want
3 to see the numbers.

4 MR. VENTOLA: We want to see the numbers, that's
5 exactly right, Your Honor.

6 And if the -- if we can't agree on a budget, we
7 will be one of the parties Mr. Resnick just referred to
8 coming and asking for relief from this Court or issuing a
9 termination declaration or both of those things. I'm very
10 glad Mr. Resnick said that because I was going to rise to say
11 that.

12 We reserve our rights, Your Honor, we just need to
13 see the budget. And it's no knock on anyone, this is all
14 happening in real time. But once we see it, we'll either
15 agree and we'll agree to cover those expenses or allow the
16 debtor to cover those expenses or we'll come back and let
17 Your Honor know that we don't have agreement. Thank you.

18 MR. SIMON: Your Honor, Chad Simon, Otterbourg, PC,
19 on behalf of 1903, as agent for the DIP term lenders.

20 Your Honor, I echo Mr. Ventola's comments. We're
21 at a point here, we expect to get a budget that will reflect
22 what the costs are. We understand that this is a process and
23 the path forward between now and when the next status
24 conference is. We will -- we support that path. We
25 understand that the GOB stores need to -- sales need to

1 commence.

2 All parties -- I'll say it again and perhaps last.
3 All parties' rights are reserved and Your Honor has the
4 ability to address any issues at a later date, if people come
5 in and have objections to what has transpired in the seven,
6 eight days that we'll be back before Your Honor.

7 THE COURT: Okay. Mr. Alberto.

8 MR. ALBERTO: Thank you, Your Honor. Justin
9 Alberto from Cole Schotz.

10 The question Your Honor asked about the escrowing
11 of proceeds is something that the committee raised during the
12 break. We were -- we understand from counsel to the lenders
13 that it's not as easy as just pressing a button and
14 preventing proceeds -- as they get realized in real time,
15 preventing them from going to the lenders.

16 The comfort that we take, Your Honor, is, one the
17 point you raise is the point we raised, and we can come back
18 and say things should not have gone out of these estates,
19 monies should not have flown out of these estates. We're not
20 dealing with a mom-and-pop thrift here as a lender; we have
21 PNC and 1903 in the case, so we're -- you know, we feel
22 protected in that regard.

23 THE COURT: Okay.

24 MR. VENTOLA: Your Honor, John Ventola again
25 briefly. I'm sorry. I didn't address that part of your

1 question and I want to say thank you to Mr. Alberto.

2 This came up with the cash management motion at the
3 very first day. I'm told it's literally impossible to sort
4 of turn off this complicated automated system. So that's
5 exactly what I told Mr. Alberto, and thank him again for
6 reminding me. But again, if people think money came in that
7 shouldn't have gone back out, we can deal with it, and we'll
8 commit to working with the parties if that dispute arises.
9 And I apologize again for not addressing that, Your Honor.
10 Sorry.

11 THE COURT: Anyone else? Ms. Heilman.

12 MS. HEILMAN: For the record, Leslie Heilman,
13 Ballard Spahr, on behalf of various landlords.

14 Your Honor, I rise just to -- just for one point.
15 You know, we understand that we can't like turn off the
16 spigot and turn off the sweeping. But we did understand that
17 there may be -- that the parties are going to account for any
18 money that goes out the door.

19 I think it's very imperative that, except for the
20 current expenses -- because we've talked a lot about the
21 costs of the current GOBs are going to be covered. But we do
22 know that there are defaults in payments of post-petition
23 rent obligations, not just stub, but other post-petition
24 expenses have not been paid.

25 So I think, from this point forward, if we can't

1 turn off the sweep, we need to account for what's going out
2 the door and also account for what has not been paid. I
3 think that, at a minimum, the part -- everybody needs to be
4 on the same page as to what expenses have not been paid what
5 expense -- what monies are going tout the door. Thank you,
6 Your Honor.

7 THE COURT: Okay. Is that part of the projected
8 budgeting process?

9 (Participants confer)

10 THE COURT: Accounting for what's been paid and a
11 process for what is to be paid?

12 (Participants confer)

13 MR. RESNICK: I'm not sure that would actually,
14 technically, normally, be part of a budget, but I assume -- I
15 mean, AlixPartners is -- I assume they're keeping close track
16 of everything that has been paid and will be paid, and we'll
17 make sure that that happens. But I don't think that would
18 normally be part of a budget. I don't think we were thinking
19 --

20 THE COURT: Well, I understand.

21 MR. RESNICK: -- of going with --

22 THE COURT: But we're in unique territory.

23 MR. RESNICK: Right.

24 THE COURT: So I mean, at this juncture, do we even
25 know what outstanding admins there are?

1 MR. RESNICK: I assume the finance function at the
2 company and AlixPartners has a good handle of payables and
3 outstanding admin.

4 THE COURT: Okay.

5 MR. GOLD: Good afternoon again, Your Honor. Ivan
6 Gold for various landlords.

7 There's actually a term for what AlixPartners needs
8 to generate, it's a "variance report," in terms of the old
9 budget versus the current reality. That's the snapshot that
10 I referred to in my earlier comments is where are we now.
11 The new wind-down budget that would be proposed by the 26th
12 is a suggestion as to where we're going. So, to resolve that
13 question, I think we do need both. The committee's motion
14 had some estimates, but I think we need a serious look at
15 what happened and didn't happen financially to get us to this
16 point.

17 THE COURT: Well, and obviously, January 1 is a
18 pivotal date. So I think we need to know where we're going
19 and who we owe what to get a very clear picture.

20 MR. GOLD: Completely agree, Your Honor. Thank
21 you.

22 THE COURT: Look, I appreciate that -- well, I
23 should say does anybody else want to be heard?

24 (No verbal response)

25 THE COURT: I do appreciate that the only thing

1 before me today is a request to continue the GOB sales. And
2 I do think that, going forward, the GOB sale is the best
3 alternative here. I think the committee stated it
4 accurately, we're in a position to need to maximize value.

5 So I will allow them to commence today. I had a
6 few other comments with respect to my thought process, but I
7 think that you have addressed my concerns. I'd like to make
8 sure there's a notice on the docket of what the path forward
9 is.

10 Will you be providing a modified order or just this
11 record?

12 MR. RESNICK: I think the record suffices for our
13 purposes, Your Honor.

14 THE COURT: Okay. We -- I do want to give you
15 time. I am not here the 26th or 27th, so I do want to give
16 you time on the 30th -- or wait, the -- when did you ask --

17 MR. RESNICK: Yes. Yeah --

18 THE COURT: The 30th --

19 MR. RESNICK: November 30th --

20 THE COURT: -- is a Monday, right?

21 MR. RESNICK: December 30th what was I requested,
22 Your Honor.

23 THE COURT: Yes. Let's do December 30th at 11 a.m.

24 MR. RESNICK: Perfect.

25 THE COURT: And I appreciate all parties' rights

1 are reserved.

2 MR. RESNICK: Thank you, Your Honor.

3 And will Your Honor be here in person or by Zoom?

4 I know some of us may --

5 THE COURT: I will be here in person.

6 MR. RESNICK: Okay. And would it be okay, Your
7 Honor, if some of us appearing by Zoom, being in different
8 jurisdictions?

9 THE COURT: If you have substantial argument, I
10 would ask that you be here in person.

11 MR. RESNICK: Okay. We'll --

12 THE COURT: But otherwise, you may be on Zoom. It
13 will be a hybrid hearing.

14 MR. RESNICK: Thank you, Your Honor. Understood.

15 Okay. I think that, with that, it just brings me
16 to the two things that were uncontested. One was the
17 Westminster sale motion at Docket Number 1347. We filed a
18 certificate of no objection to that. I didn't know if Your
19 Honor had any questions or if there was a reason why a
20 substantive --

21 THE COURT: Well, I didn't get to look at it,
22 honestly --

23 MR. RESNICK: Okay.

24 THE COURT: -- until last evening. But I took my
25 notes into my office. Can you wait one second while I --

1 MR. RESNICK: Of course.

2 THE COURT: -- grab my notes.

3 MR. RESNICK: Of course.

4 (Off the record 3:31 p.m. to 3:32 p.m.)

5 THE COURT: My apologies. I walked out with my
6 notes.

7 MR. RESNICK: Sure, Your Honor.

8 And my colleague Vincent Cahill is the expert on
9 this motion, so I'm going to cede the podium to him.

10 THE COURT: I did read the motion.

11 Does anyone want to be heard with respect to this
12 motion or the proposed form of order?

13 (Participants confer)

14 THE COURT: Okay. I will authorize the sale and
15 approve the settlement. I'm finding it is in the best
16 interests of the debtors and their estates.

17 Based on the Macke -- I believe is how you say it -
18 - declaration, the sale constitutes the highest and otherwise
19 best offer for the property, and the sale and the resolution
20 of the litigation was negotiated at arm's length and in good
21 faith. The buyer is not an insider based on the Macke
22 declaration. And the buyer conducted itself in good faith
23 and in a non-collusive manner.

24 Further, the uncontroverted evidence establishes an
25 additional marketing and sale would not justify the

1 associated costs and delay, and that no likely purchaser
2 would emerge for consideration exceeding the purchase price.

3 In addition, based on the facts and circumstances
4 of the case and the evidence present, I find the settlement
5 satisfies the Martin factors and the compromise is fair and
6 reasonable and in the best interests of the debtors and their
7 estates and creditors, so I will enter the order.

8 I just note, in Paragraph (a), that there is a
9 marker in Line 1 for a docket number that wasn't filled out.

10 MR. CAHILL: Thank you, Your Honor. We'll have
11 that updated and share a revised form of order with your
12 chambers this afternoon.

13 THE COURT: And wait, I had one other question,
14 sorry. I can't read my own writing.

15 I don't appreciate the difference between Paragraph
16 20 and 14, and if you can just look at that. And if they're
17 duplicative, if you can just delete one of them.

18 MR. CAHILL: Understood, Your Honor. We'll plan to
19 do so.

20 THE COURT: Okay. And it just has to do with
21 modifying nonmaterial modifications. I think it says the
22 same thing in both paragraphs.

23 MR. CAHILL: Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. CAHILL: Thank you, Your Honor. I believe that

1 brings us to the December lease sale wave that is proceeding
2 today on an uncontested basis. Certain potential disputes
3 have been consensually adjourned while parties continue to
4 negotiate.

5 Mr. Goldberger, my colleague has been handling that
6 motion and is available to handle any questions Your Honor
7 may have.

8 THE COURT: Okay.

9 MR. GOLDBERGER: Good afternoon, Your Honor. Jacob
10 Goldberger, Davis Polk, co-counsel for the debtors.

11 The final item on the agenda is to authorization to
12 enter into the various lease termination and assumption and
13 assignment agreements for many of the leased properties for
14 which the debtors received bids on as part of the December
15 wave of the lease sale process.

16 This round was the most lucrative yet for the
17 debtors' estates due to multiple bidding wars. The auction
18 resulted in gross proceeds inclusive of cure waiver of about
19 four and a half million dollars and over \$2.9 million in net
20 proceeds to the estates after cures.

21 The foregoing is set forth in additional detail in
22 the declaration of Emilio Amendola of A&G Real Estate
23 partners filed at Docket 1375, which I'd propose to move into
24 evidence at this time.

25 THE COURT: Does anyone object to the admission of

1 the evidence -- of the declaration into evidence?

2 (No verbal response)

3 THE COURT: Okay. I hear no one, it's admitted.

4 (Amendola Declaration at ECF 1375 received in evidence)

5 THE COURT: Does anyone want to cross-examine the
6 declarant?

7 (No verbal response)

8 THE COURT: Okay. I hear no one, I see no hands on
9 Zoom.

10 MR. GOLDBERGER: And I have a copy of that for Your
11 Honor.

12 THE COURT: Okay. You may approach. Thank you.

13 MR. GOLDBERGER: As Mr. Resnick noted, in an effort
14 to narrow the issues before Your Honor today, the debtors
15 worked collaboratively with the landlords and the new lease
16 counterparties to come before you consensually.

17 A total of nine objections were filed this round:

18 One objection, filed at Docket 1330, relates to a
19 lease that did not receive a bid this round.

20 Four objections relate to bids from Ollie's.

21 Ollie's has worked hard to resolve these objections and we
22 understand that side letters are finalized or nearly
23 finalized, resolving the objections relating to the Tampa and
24 Corpus Christi locations. In addition, the debtors are
25 revising the cure amount on the Corpus Christi location to

1 \$31,414.31.

2 We've added language to the order addressing the
3 Boone location objection and Ollie's has declined to pursue
4 the Lee's Summit location due to that objection.

5 The debtors greatly appreciate the effort that
6 Ollie's and their counsel --

7 THE COURT: Wait. I'm sorry. Can I stop you a
8 minute?

9 MR. GOLDBERGER: Yep.

10 THE COURT: Was that the -- which one was that, was
11 that WPG?

12 MR. GOLDBERGER: No, WPG is a Burlington --

13 THE COURT: Okay.

14 MR. GOLDBERGER: Yeah.

15 THE COURT: Which one?

16 MR. GOLDBERGER: Lee's -- the location is Lee's
17 Summit.

18 THE COURT: Okay. Part of --

19 MR. GOLDBERGER: And --

20 THE COURT: Thank you.

21 MR. GOLDBERGER: And we greatly appreciate the
22 effort that Ollie's and their counsel have expended on
23 resolving these objections.

24 Three objections relate to bids from Burlington.

25 With the respect to the objection from WPG filed at

1 Docket 1325, we understand the parties have entered into a
2 side letter resolving the objection. For the avoidance of
3 debt, the debtors are in agreement with the cure amount as
4 calculated in the objection and will be paying that cure
5 amount, and the side letter resolves all other issues.

6 The two other Burlington objections relate to a
7 lease situated next to a Ross Dress for Less location. The
8 landlord and Ross have raised issues. But in an effort to
9 provide more time to address those issues raised, the parties
10 have agreed to adjourn those objections and the potential
11 sale to the January omnibus hearing.

12 THE COURT: Okay. Are those -- which objections
13 are those?

14 MR. GOLDBERGER: That's the objection of the
15 landlord from the Nashville location and Ross Dress for Less.

16 THE COURT: Okay.

17 MR. GOLDBERGER: I can get the exact -- the docket
18 numbers for Your Honor.

19 THE COURT: I just want to make sure we
20 appropriately carry them to the next month.

21 MR. GOLDBERGER: Yeah, we'll reach out with those -
22 - with that and provide that information to you.

23 And finally, with respect to the Burlington bid,
24 the Lancaster location, there no formal objection filed, but
25 we've -- the debtors have extended the objection deadline as

1 the parties were working in good faith to resolve certain
2 issues. And we're going to include language in the order
3 that provides a little more time for the parties to finalize
4 a side letter and continue negotiating on the cure, which we
5 believe is something that we should be able to resolve
6 shortly.

7 THE COURT: Okay.

8 MR. GOLDBERGER: So that's for Burlington. I don't
9 know if Kristhy -- if you -- if she has anything to add from
10 Burlington's perspective.

11 THE COURT: Good afternoon.

12 MS. PEGUERO: Good afternoon. Good afternoon,
13 Kristhy Peguero from Jackson Walker on behalf of Burlington.

14 Nothing to add. Thank you. We --

15 THE COURT: Okay.

16 MS. PEGUERO: -- we are in agreement.

17 MR. GOLDBERGER: Okay. Thank you very much.

18 The final objection filed at Docket 1337 relates to
19 an Aldi bid. And again, the parties have agreed to adjourn
20 the issue until the January hearing and we will get that --
21 the docket again for Your Honor.

22 The two that relate to the Ross lease location
23 issue are Dockets 1346 and 1350. And we'll provide the --
24 similarly, provide the one for this final Aldi's bid, the
25 Vero Beach location, that is similarly being adjourned.

1 The proposed order is substantially the same as the
2 version used in the prior rounds, with just the addition of
3 paragraphs that reflect the adjournment agreements and
4 resolutions, as described and reached with certain
5 objections. I have a copy of the redline here showing those
6 changes. I can --

7 THE COURT: That would be great. Thank you.

8 Are there any applicable lease termination
9 agreements? I noticed Exhibit B and Ce weren't attached, and
10 that's why I asked th question.

11 UNIDENTIFIED: Yes.

12 THE COURT: Thank you.

13 (Participants confer)

14 MR. GOLDBERGER: Yes, Your Honor. There are
15 termination agreements and assumption and assignment
16 agreements. We held off on filing those because they hadn't
17 been finalized as parties worked through figuring out which
18 leases were going to be going forward and finalizing the
19 terms. But we intend on filing the completed order with
20 those later today.

21 THE COURT: Okay. Terrific. Thank you.

22 Before you proceed further, I see Ms. Mersky has
23 her hand raised. Ms. Mersky? Ms. Mersky, you're -- there
24 you are.

25 MS. MERSKY: Yes. Thank you, Your Honor.

1 I represent the landlords for the Bayside and
2 Montebello locations. We do -- no longer have any objections
3 to those. The Bayside lease is going to be signed with
4 Burlington and we've agreed on the cure (indiscernible)
5 original cure, and that is reflected in the exhibit that was
6 filed by the debtors and there is no objection to the Hobby
7 Lobby assignment of Montebello. We worked with the parties
8 and were actively involved in an auction which helped
9 significantly increase the value to the debtor. But the --
10 as long as the Burlington cure is as reflected in the
11 exhibit, there are no objections.

12 THE COURT: Okay. Thank you.

13 MR. GOLDBERGER: So there are three added
14 paragraphs here, 24, 25, and 26:

15 Paragraph 24 describes the resolution for the Boone
16 objection at Docket 1288, which is essentially that Ollie's
17 is covering \$24,000 towards the resolution of a claim of lien
18 on that real property.

19 And 25 and 26 are the agreements to have the
20 objections related to both the Vero Beach and Nashville
21 leases -- those are the Burlington bid and the Aldi bid --
22 pushed to January. In both cases, the debtors are not taking
23 on any costs relating to January to may accrue, that
24 landlords have agreed to waive those amounts as we
25 facilitated extra time for the parties to negotiate and

1 resolve these issues.

2 And in addition, with respect to the Vero Beach
3 lease, there's a backup bidder who otherwise wouldn't have
4 been held to their backup bid through the end of January.
5 They have agreed to maintain their backup bid pursuant to
6 terms agreed to with the debtors through the January 21st
7 hearing, and that's reflected in Paragraph 25, as well.

8 So, if there's nothing further from Your Honor, we
9 would suggest that we get together the termination
10 agreements, the assumption and assignment agreements, and
11 submit a revised form of order later today.

12 THE COURT: Okay. I believe Ms. Heilman would like
13 to be heard.

14 At this time, anyone else who wants to be heard
15 with respect to this motion or the proposed form of order,
16 please come forward.

17 MS. HEILMAN: Good afternoon. Again, for the
18 record, Leslie Heilman for Ballard Spahr on behalf of --
19 subject to this motion and in addition to this motion, I have
20 four landlords, Your Honor. Three of them are with respect
21 to three lease termination bids that were submitted outside
22 of the December lease sale process. And then we do have one
23 that was submitted in connection with the December lease sale
24 process.

25 We'll take the first one. The first one is for

1 Brixmor Property Group with respect to Wallkill Plaza at
2 thirteen -- Store Number 1377, Your Honor. It is listed on
3 the schedule to the proposed order, and we have no objection
4 for it to be included in this order.

5 Your Honor, we do have an objection, though, to the
6 Arcadia, California location being included in this order; it
7 is Store Number 4025. I believe we had an agreement with the
8 debtor that we would be proceeding through a separate order
9 that would be submitted to Your Honor under certification of
10 counsel.

11 Because it wasn't noticed as part of the December
12 lease sale process, I think it makes more sense that we
13 proceed with a stipulated order with respect to that lease
14 termination. And as of right before the hearing, Your Honor,
15 we understand that the additional -- we actually -- let me
16 back up.

17 The landlord submitted three separate lease
18 termination bids back in October for these properties.
19 Neither -- none of them were subject to any of the prior sale
20 processes. And we -- the debtors accepted our offers in
21 November with respect to these three lease termination bids
22 and agreed to pull them from any further marketing and any
23 December -- end of December sale process.

24 We learned shortly after the December auction that
25 they were -- the debtors were retracting their agreement to

1 close on the -- on two of the bids, which was Inglewood,
2 California and National City, California. And right before
3 the hearing today, we understand that they are now willing to
4 close on Inglewood, California. So we need to add Inglewood,
5 California to this stipulated order, in addition to the
6 removal of Arcadia, California from the December sale
7 process, and submit them under a separate order.

8 With respect to the remaining property, Your Honor,
9 we understand that the debtors are proceeding to an auction
10 with respect to National City, California in January. Your
11 Honor, we do object to proceeding to an auction. We believe
12 that we had an offer in acceptance. But we will reserve all
13 rights. We will participate in that process, but the
14 landlord does reserve all rights in regard to contest
15 proceeding to an auction and not closing on our agreed deal.

16 But with respect to that, Your Honor, I think we
17 are proceeding through a stipulated order. I believe Mr.
18 Goldberger can confirm that, but I just wanted to clarify
19 that we weren't proceeding under the current Exhibit A that's
20 under the December sale process.

21 THE COURT: Okay.

22 MR. GOLDBERGER: Yes, thank you.

23 Mrs. Heilman is -- Ms. Heilman is right about the
24 Arcadia lease, that one we're going to be removing. It
25 wasn't part of the December wave of lease sales and it will

1 be submitted separately for Your Honor.

2 With respect to the other leases, the debtors have
3 had discussions with certain landlords outside of the context
4 of the lease sales. Parties are aware of the possibility of
5 a lease being for sale well before the debtors file anything.
6 There's GOB sales that are going on and counterparties are
7 aware that a lease may be subject to a future wave of
8 auctions.

9 And we have landlords proactively reach out to A&G
10 and make an offer to terminate a lease and leave it outside of
11 the process of the auction. And on occasion, A&G decides in
12 their business judgment that that offer -- this offer is the
13 best offer, and those are not part -- put into the next wave
14 of lease sales and are dealt with separately.

15 So the leases that Ms. Heilman is talking about
16 were not part of the December wave of lease sales. The
17 debtors are still deciding how to treat those and we don't
18 think it's before Your Honor today. But we respect the fact
19 that all rights are reserved with respect to those leases.

20 THE COURT: Okay. And they are.

21 MS. HEILMAN: Sorry, Your Honor. Leslie Heilman,
22 Ballard Spahr, for the record.

23 I think I do need confirmation from the debtors
24 that we are entering an order with respect to the two
25 properties, Arcadia, California and Inglewood, California, to

1 be terminated effective December 31st.

2 THE COURT: I understood that was going to be a
3 stipulation.

4 MR. GOLDBERGER: Yeah, that's the intention. It's
5 the one lease that the debtors received alternative interest
6 in that we have to decide how to move forward on.

7 THE COURT: Right. But as to Arcadia, four oh two
8 -- Lease 4025, and Inglewood, I'm going to see a stipulation,
9 a form of order.

10 MR. GOLDBERGER: Yes, that's our intention.

11 THE COURT: Mr. Pacitti.

12 MR. PACITTI: Good afternoon, Your Honor. For the
13 record, Domenic Pacitti, Klehr Harrison Harvey Branzburg, on
14 behalf of Blue Owl.

15 Your Honor, I just want to confirm Mr. Goldberg's
16 representations with respect to the Lancaster, California
17 lease. We are working with Burlington and the debtors to
18 finalize all the documents, we just couldn't get there before
19 today. So we're just going to insert some reservation of
20 rights language in the proposed form of order that reserves
21 folks' rights until all of that documentation and
22 reconciliation of the cure amounts has been achieved. Thank
23 you.

24 THE COURT: Thank you. I --

25 MR. GOLDBERGER: Nothing --

1 THE COURT: Do the debtors --

2 MR. GOLDBERGER: No --

3 THE COURT: -- have any issue --

4 MR. GOLDBERGER: -- nothing further.

5 THE COURT: -- with that representation?

6 MR. GOLDBERGER: That's correct.

7 THE COURT: Okay. Anything further?

8 (No verbal response)

9 THE COURT: Anyone on Zoom?

10 (No verbal response)

11 THE COURT: Okay. So, based on the record that has
12 been made and the withdrawal or resolution of all objections,
13 I'm prepared to approve this motion.

14 I'm satisfied the terminations or assumption and
15 assignment sales are in the best interests of the debtor,
16 their estates and creditors. The proposed sale of the lease
17 assets constitutes a reasonable and sound exercise of the
18 debtors' business judgment.

19 Based on the -- Amendola?

20 MR. GOLDBERGER: Amendola, yeah.

21 THE COURT: Declaration at Docket 1375, the debtors
22 undertook a marketing process with respect to what I'll call,
23 quote, "wave four" properties and debtors did hold a
24 competitive auction, each of -- with respect to certain
25 leases. Each of the purchase price represents the highest or

1 otherwise best offer. Each sale agreement was negotiated at
2 arm's length and in good faith. No purchaser acted in a
3 collusive or fraudulent manner and acted in good faith
4 entering into the sale agreements and consummating the sale
5 of each of the lease assets, is fair and reasonable and
6 represents the sound exercise of the debtors' business
7 judgment. So I will enter that revised order when it's
8 uploaded.

9 MR. GOLDBERGER: Thank you, Your Honor.

10 THE COURT: I know there's a couple of housekeeping
11 matters we need to discuss, in terms -- including a date --

12 MR. ALBERTO: Correct, Your Honor.

13 THE COURT: -- for Mr. Alberto.

14 MR. ALBERTO: That's all that we have left, from
15 the committee's perspective.

16 THE COURT: And you wanted January 6th?

17 MR. ALBERTO: Yes, Your Honor, preferably in the
18 afternoon, but we can make any time work. It's just it's a
19 Monday after the holidays, so I was thinking of folks who
20 were traveling back, a 9 a.m. hearing might not be best.

21 THE COURT: How about two o'clock on the 6th?

22 MR. ALBERTO: That's fine. That works for the
23 committee. And I see Mr. Resnick shaking his head, as well,
24 for the debtors.

25 THE COURT: Okay. Okay.

1 MR. RESNICK: That's fine, Your Honor.

2 MR. ALBERTO: Thank you, Your Honor.

3 THE COURT: Let's talk a minute about the 30th
4 because I know a lot of people are going to be traveling and
5 a lot of people are going to be out of the office. I want to
6 make sure we're prepared to go forward on the 30th and that
7 the Court has any information the Court needs in advance of
8 that.

9 MR. RESNICK: And I'm glad you raised it. We've
10 been trying to figure it out because --

11 THE COURT: And I don't know what that is, so ...

12 MR. RESNICK: Yeah. We -- in discussing it with
13 other parties, as well, there are a lot of people who are
14 going to be out of town, including Mr. Shpeen, myself, and
15 our litigator Mr. McClammy. It's supposed to be a status
16 conference, but of course we can't preclude that from being
17 something more contentious or litigious. So will Your Honor
18 --

19 THE COURT: But we're going to limit it in scope to
20 this issue.

21 MR. RESNICK: That is our hope, that it's limited
22 to this issue.

23 THE COURT: Okay. I'm out of chambers the 26th and
24 27th, so, if something arises and you need a duty judge, just
25 alert my chambers.

1 MR. RESNICK: Thank you, Your Honor.

2 THE COURT: I am here on the 23rd, I have --

3 MR. RESNICK: Yeah.

4 THE COURT: -- other matters. But if we need to
5 make time for something, I will be here.

6 MR. RESNICK: Thank you, Your Honor.

7 THE COURT: So -- but at a minium, if I could get -
8 - you're going to file the budget.

9 MR. RESNICK: We're going to file the budget. And
10 we --

11 THE COURT: The notice.

12 MR. RESNICK: As far as we know, we're just
13 planning, on the 30th, planning on just keeping Your Honor
14 and the parties informed. And if anybody has any, you know,
15 questions about the budget, the process, what we're doing
16 with the Gordon Brothers sales, the going concern sale
17 efforts, we're happy to address those. You know, it's not
18 for us; it's for Your Honor and the parties, so we're happy
19 to do it any way people would like, but --

20 THE COURT: All right. Well, just so there are no
21 surprises, I think I've made my views pretty clear. But I
22 will be wanting to know about the payment of administrative
23 expenses at that hearing and the continued path forward.

24 MR. RESNICK: Absolutely, Your Honor.

25 THE COURT: Okay? Anything else for today? Oh, I

1 have a question.

2 There is a pleading that was scheduled to go
3 forward today, but I think it wasn't -- I think it was
4 uncontested, but it has to do with FTI, FTI's retention. And
5 I'm not sure, it was a motion to seal, and I haven't seen
6 like a cert or anything. And I just want to make sure we're
7 proceeding on an uncontested path and I'm going to get a cert
8 or is there an issue. It's Agenda Item 11, if that's --

9 MR. ALBERTO: Thank you, Your Honor. I, too, saw
10 it on the agenda. There's no order or no objections. We'll
11 make sure that we --

12 THE COURT: Okay.

13 MR. ALBERTO: -- upload --

14 THE COURT: I just -- perfect.

15 MR. ALBERTO: -- an order for Your Honor's
16 signature.

17 THE COURT: Okay.

18 MR. ALBERTO: I -- we'll file a CNO or a COC, as
19 appropriate.

20 THE COURT: Okay. Terrific.

21 MR. ALBERTO: I don't have the exact --

22 THE COURT: I just wanted --

23 MR. ALBERTO: Sorry.

24 THE COURT: -- to make sure that it -- I like to
25 keep a running list of what we need to file up on, so --

1 MR. ALBERTO: We'll make sure you get what you need

2 --

3 THE COURT: Okay.

4 MR. ALBERTO: -- for this. Thank you.

5 THE COURT: Thank you.

6 Is there anything further for today?

7 (No verbal response)

8 THE COURT: Okay. Thank you all for your time.

9 I'm not going to wish you a Happy New Year. Instead, I will
10 see you on the 30th of December.

11 (Laughter)

12 THE COURT: Have a great afternoon, everyone.

13 COUNSEL: Thank you. Thank you, Your Honor.

14 (Proceedings concluded at 3:55 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.



December 23, 2024

Coleen Rand, AAERT Cert. No. 341
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